

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

BARBARA BROWN-OTIS,

Plaintiff,

v.

PARTY CITY HOLDINGS, INC.,

Defendant.

Civil Action No.: 2:22-cv-00371

Circuit Court for Isle Wight
County, Virginia
Case No. CL-22-764

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Party City Holdings, Inc. (“Defendant”), by counsel, respectfully files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, to remove to the United States District Court for the Eastern District of Virginia an action initiated against them in the Circuit Court for Isle Wight County, Virginia. Removal of this action is based on the following:

1. On July 28, 2022, Plaintiff Barbara Brown-Otis filed a civil action against Defendant in the Circuit Court for Isle Wight County, Virginia, case number CL-22-764 (hereinafter “State Court Action”). In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders received by counsel for the Defendant in the State Court Action is attached to this Notice of Removal as **Exhibit A** and incorporated herein by reference.

2. The Complaint in the State Court Action asserts negligence claims against Defendant arising from an alleged trip-and-fall accident. (Ex. A, Compl.)

3. On September 2, 2022, Defendant filed an Answer to the Complaint in the State Court Action. A true and correct copy of the Answer is attached hereto as **Exhibit B** and is

incorporated herein by reference.

4. Defendant was served with process on August 4, 2022. Thus, this Notice of Removal is timely filed because it is filed not more than thirty (30) days after Defendant received a copy of the Summons and Complaint, through service or otherwise. 28 U.S.C. § 1446(b).

5. The Eastern District of Virginia, Norfolk Division, is the federal district embracing Isle Wight County, Virginia, where the State Court Action was originally filed. 28 U.S.C. § 127(a). Thus, Defendant's Notice of Removal is properly filed in this District and Division. 28 U.S.C. § 1441(a).

BASIS FOR REMOVAL – DIVERSITY JURISDICTION

6. The State Court Action is removable under 28 U.S.C. § 1332(a). The Court has subject matter jurisdiction over the State Court Action because it is between citizens of different states and the amount in controversy exceeds \$75,000.00 and arises under the laws of the United States. 28 U.S.C. § 1332(a).

7. Party City Holdings, Inc. is a Delaware corporation with its principal place of business in Elmsford, New York. Thus, it is a citizen of Delaware and New York for the purposes of diversity jurisdiction.

8. On information and belief, Plaintiff is now, and was at the time of the filing of the Complaint, a citizen of Virginia.

9. Plaintiff's Complaint requests judgment against Defendant in the amount of \$250,00.00. (Ex. A, Compl. prayer for relief). Thus, the amount in controversy requirement specified in 28 U.S.C. § 1332(a) is satisfied.

10. If any question arises regarding the propriety of the removal of this action, Defendant respectfully requests the opportunity to conduct jurisdictional discovery (if

necessary), file a brief, and present oral argument to confirm that this Court has jurisdiction and that this case has been properly removed.

NOTICE

11. In accordance with 28 U.S.C. § 1446(d), prompt written notice of the filing of this Notice of Removal is being given to all other parties, and a true and correct copy of the Notice of Removal is being filed with the Circuit Court for Isle Wight County, Virginia.

CONSENT

12. There are no codefendants requiring consent.

WHEREFORE, Party City Holdings, Inc., by counsel, respectfully prays that the State Court Action be removed from the Circuit Court for the Isle Wight County, Virginia, to the United States District Court for the Eastern District of Virginia, in accordance with 28 U.S.C. § 1441, and for such further legal, equitable, or other relief that the Court deems just and proper.

This the 2nd Day of September, 2022.

Respectfully submitted,

PARTY CITY HOLDINGS, INC.

By: /s/
Joseph P. Moriarty (VSB No. 68465)
WILLCOX & SAVAGE, P.C.
Wells Fargo Center
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510-2243
Telephone: (757) 628-5500
Facsimile: (757) 628-5566
jmoriarty@wilsav.com
Counsel for Defendant

CERTIFICATION

I hereby certify that on this 2nd day of September, 2022, I electronically filed the forgoing with the Clerk of the court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Joel C. Cunningham, Jr. Esq. (VSB No. 42241)
Cunningham Law Group, PC
120 Edmunds Blvd.
Halifax, Virginia
Telephone: 434-476-6446
Email: joelcunninghamlaw@gmail.com
Counsel for Plaintiff

By: /s/
Joseph P. Moriarty (VSB No. 68465)
WILLCOX & SAVAGE, P.C.
Wells Fargo Center
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510-2243
Telephone: (757) 628-5500
Facsimile: (757) 628-5566
jmoriarty@wilsav.com
Counsel for Defendant